THE HON'BLE SRI JUSTICE E.DHARMA RAO

WRIT PETITION NO.17181 OF 2005

O R D E R:

This writ petition is filed for declaring the action of respondents in invoking the provisions under Section 452 of Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') by issuing notice in UC No.5/2000/ACP-1/B.A.No.10465/05/ACP-1, dated 25.07.2005 and also threatening to demolish the constructions made by the petitioners as arbitrary, illegal and opposed to the guidelines formulated by a Full Bench decision of this Court and also for a consequential direction to the respondents not to interfere with the constructions made by the petitioners in the premises bearing No.30-13-16, Allipuram, Madhava Road, Visakhapatnam.

It is the case of petitioners that they are the absolute owners and possessors of the house site admeasuring 597 square yards situated at Madhava Road in Plot Nos.5, 43 and 44 covered by Block No.41, T.S.No.1452 of Allipuram ward, within the limits of the respondent Corporation. They entered into an agreement with M/s.Srinivasa Constructions, represented by its Managing Partner for the construction of flats in the said plot. After obtaining the sanctioned plan, they started construction. At the stage of construction of a stilt floor, the second respondent threatened the petitioner to demolish the entire construction without giving any reasons. Aggrieved by the action of the second respondent, the petitioner filed W.P.No.15452 of 2004 before this Court and this Court by order dated 15.07.2005 granted interim direction directing the respondents therein not to interfere with the construction, if it is in accordance with the sanctioned plan. This Court also made an observation that if the construction is not made in accordance with the sanctioned plan, the respondents can proceed with against the petitioners. Taking advantage of the observations of

this Court, a notice under Section 452 of the Act was issued by the respondent authorities, pointing out minor deviations. While interpreting Section 452 of the Act, a Full Bench of this Court held that in cases where applications have been duly filed in accordance with law, after fulfilling all the requirements, seeking permission to construct building and permission was also granted by the Corporation, the power of demolition should be exercised by the Corporation only if the deviations made during the constructions are not in public interest or cause public nuisance or hazardous or dangerous to public safety including the residents therein. If the deviations or violations are minor, minimal or trivial, which do not affect public at large, the Corporation will not resort to demolition. In the light of the law laid down by this Court, the notice in question is totally without power and ultra virus. It is also the case of the petitioner that in a similar matter, though a Division Bench of this Court also held that granting three days time to give reply to the notice under Section 452 of the Act is unreasonable and minimum six weeks time should be granted, but in the instant case only three days time was granted contrary to the law laid down by a Division Bench of this Court. As no sufficient time was granted to the petitioners, they filed their explanation to the show cause notice in a hurried manner without explaining the true facts in detail. In the impugned notice, the respondents mentioned the deviations totaling six in number. The first deviation mentioned by the respondents is that the petitioners failed to issue notice under Section 440 of the Act. The second deviation is that as against the set backs of 4.00 meters of land both on western and rear sides, they left only 3.66 meters and 3.22 meters. The third and fifth deviations are made in respect of 34 centimeters and 33 centimeters in the stilt floor and 2.4% in respect of the permissible coverage. The fourth deviation is made with regard to the balconies. As per the sixth deviation, there was a difference of 10 centimeters in the height of cellar portion. Though the petitioners submitted their reply to the notice on 29.07.2005, the same was not considered so far and no enquiry was conducted and the respondents are threatening to demolish the

construction in question. Hence, this writ petition is filed.

The learned counsel for the petitioners submits that keeping in view the ‘vastu’ and also the elevation of the entire building, minor deviations are made by them, which do not affect the public interest or cause any danger to the interests of the inmates of the building or the neighbors. It is also submitted that as they started construction of the building with the permission of the respondent authorities, the respondents cannot treat the construction as an unauthorized construction. It is also submitted that though there are some deviations in respect of other constructions, the respondents regularized several constructions. Therefore, there is no justification on the part of the respondents in invoking the provisions of Section 452 of the Act in respect of such trivial deviations.

The learned Standing Counsel for the respondent-Corporation submitted that this writ petition is filed by the petitioners on mere apprehension that the respondents are trying to demolish the portion of the building.

As the respondents issued the impugned notice, dated 25.07.2005 without giving sufficient time to the petitioners to submit their detailed explanation, without going into the merits of the case, I deem it appropriate to dispose of the writ petition at the admission stage directing the petitioners to submit their detailed explanation to the show cause notice issued by the respondent authorities, dated 25.07.2005 within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the respondents are directed to pass appropriate orders by giving an opportunity of hearing to the petitioners, within a period of eight weeks from the date of receipt of the explanation. Till such time, the respondents are directed not to demolish or dispossess the petitioners from the said property.

The writ petition is accordingly disposed of at the admission stage.

E.DHARMA RAO J.,

Dt.03.08.2005

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